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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937.

No. 11

UNITED STATES OF AMERICA,
Petitioner,

vs.

ANGIE CROOK WILLIAMS,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR THE RESPONDENT.

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BRIEF FOR THE RESPONDENT.

STATEMENT OF THE CASE AND THE FACTS.

This is a suit on a War Risk Insurance certificate issued on the life of Benson Charles Williams, a seventeen-year-old boy, when he enlisted in the United States Navy for the period of his minority. The law requires a parental release or consent before he could be accepted for enlistment, but makes no provisions as to the terms thereof. The release or consent, the enlistment, the application for insurance, the request for deduction of premiums from pay and the issue of insurance certificate were all executed and became effective at the time of enlistment; and, in the release or

consent, the one necessary before any others could be negotiated, a provision was inserted that it was given only on condition that the insurance herein involved issue and continue in force during insured's minority. This provision was accepted by both insured and insurer, and in compliance therewith, a request for the deduction from insured's pay was executed by the insured, accepted by the insurer, and the insurance duly issued, naming respondent beneficiary. Some two years later, while insured was yet an infant, he made written request that his insurance be discontinued and said request was accepted and acted upon by insurer, all without the knowledge or consent of the respondent, notwithstanding the specific provisions of the consent or release by the parents that it must continue during insured's infancy. The insured continued in the service approximately ten months after his request for the discontinuance of his insurance and on each premium paying date there was sufficient money due from insurer, for his services, from which to pay his premiums, had the insurer deducted the same from his pay as per written arrangement made at time of enlistment; but no premiums were deducted after said written request by the infant to discontinue said insurance. The insured, yet an infant, during said enlistment was declared dead as of June 30, 1921. Upon notice of insured's death, the beneficiary made claim for this insurance and when notified of the written request for the discontinuance of said insurance, as his personal representative, immediately rescinded and repudiated the same, offered to pay any and all premiums that might be due and renewed her claim and demand for payment of the insurance. (Findings of Fact, R. 7, 8, 9.)

The judgment was rendered on October 11, 1935. (R. 25.) Appeal was granted and citation returnable in twenty-five days was issued October 14, 1935, during the October, 1935 term of said court, which term ended in November, 1935.

(R. 29.) No further action was taken until January 7, 1936, during the second subsequent term of said court, at which time an order was made extending the time within which to settle, sign, and file a Bill of Exceptions to March 3, 1936 and on March 3, 1936 another order was entered, extending the time to March 11, 1936, in which to settle, sign, and file a Bill of Exceptions, and on March 11, 1936 the Bill of Exceptions was settled, signed and filed. (R. 28-29.) On April 4, 1936 respondent herein filed a motion to dismiss the appeal because there was no praecipe filed for said transcript, said transcript was not filed within proper time, and the Bill of Exceptions was not filed within the time required by law and the rules of the court. (R. 30.)

THE ISSUES.

There are three issues involved in this appeal.

First. Does this court have jurisdiction in this case?

Second. Is the contract between the United States Navy and the parents and the insured infant to keep said insurance in force during infancy permissible under the authority granted by Congress and therefore valid and a part of this insurance contract?

Third. Is the United States in this insurance contract bound by the common law rule regarding contracts with infants?

POINTS AND AUTHORITIES.

POINT I.

The first duty of all courts is to look to their jurisdiction, and, if there is any missing link in the chain, jurisdiction must fail, even though not challenged. Jurisdiction cannot be waived nor assumed.

Exporters of Manufacturers' Products, Inc. v. *Butterworth-Judson Co.*, 258 U. S. 366.

Continental National Bank of Memphis, Tenn. v. *G. C. Buford*, 191 U. S. 119.

Julius K. Graves v. *Chester C. Corbin*, 133 U. S. 571.

Chicago, Burlington and Quincy Ry. Co. v. *Erastus W. Willard, Adms.*, 220 U. S. 413.

Mansfield, Coldwater and Michigan Railroad Co. v. *John Swain et al.*, 11 U. S. 379.

POINT II.

The Bill of Exceptions must be settled, signed by the trial court, and filed during the term of court in which the judgment was rendered. This record discloses the Bill of Exceptions was not settled, signed, and filed during said term, or an extension thereof, and, therefore, the trial court lost jurisdiction and the proposed Bill of Exceptions was not before the Circuit Court of Appeals and is not before this court.

Rieke Metal Products Co. v. *Finney* (C. C. A. 7), 70 F. (2d) 509.

St. Joseph Loan & Trust Co. v. *Studebaker Corporation* (C. C. A. 7), 66 F. (2d) 151.

Exporters of Manufacturers' Products, Inc. v. *Butterworth-Judson Company*, 258 U. S. 362.

Point III.

A reviewing court, in the absence of a Bill of Exceptions, is limited on appeal to question whether findings, made part of record, justify judgment.

Hallenback v. *Leimert* (C. C. A. 7), 72 F. (2d) 480.

Point IV.

This insurance was duly issued and all laws and regulations in connection therewith are a part thereof.

> "This certifies that *Benson Charles Williams* has applied for insurance in the amount of $10,000.00, payable in case of death or total permanent disability in monthly installments of $57.50. Subject to the payment of the premiums required, this insurance is granted under the authority of an Act amending 'An Act to authorize the Establishment of a Bureau of War Risk Insurance in the Treasury Department', approved October 6, 1917, and subject in all respects to the provisions of such Act, of any amendments thereto, and of all regulations thereunder, now in force or hereafter adopted, all of which, together with the application for this insurance, and the terms and conditions published under authority of the Act, shall constitute the contract." (Insurance contract.)

Point V.

When Congress by law requires the Navy to secure the written release or consent of parents to an infant's enlistment, with no limitation or directions, it grants the proper officer or agent authority to exercise his discretion as to terms and details thereof, and the only restriction imposed by implication or otherwise is that it be reasonable and in accordance with the general purpose of the Act authorizing

the same. The agreement to carry War Risk Insurance during the infancy of insured is legal, reasonable and within the implied authority granted the Navy in securing the parental consent to said enlistment.

Swayne and Hoyt v. *U. S.*, 57 S. Ct. 478.
Chesapeake and O. Ry. v. *Stapleton*, 279 U. S. 587.

Point VI.

When the United States entered the field of insurance it assumed all obligations of any other insurer, except the restrictions or limitations it specifically imposed.

Cook v. *United States*, 91 U. S. 389.
White v. *United States*, 270 U. S. 175.
Lynch v. *United States*, 292 U. S. 751.
Davis v. *Prugle*, 268 U. S. 315.
United States v. *Knott*, 298 U. S. 544.

Point VII.

Insurance contracts may consist of several separate documents, which must be construed together, if possible.

Aetna Insurance Company v. *Houston Oil and Transport Company*, 49 F. (2d) 121.

Point VIII.

The beneficiary of a War Risk Insurance certificate has only the rights given by the insured and the insurer and unless there is more to the contract than the ordinary War Risk Insurance certificate, the beneficiary has no vested interest, but, if for a valuable consideration, the insured and insurer, by contract grant the beneficiary a vested interest, the same cannot be divested by the connivance or joint ac-

tion of the insured and insurer without the knowledge and consent of the beneficiary.

> "White's mother's interest at his death *was vested only so far as he and the Government had made it so and was subject to any conditions upon which they might agree.*" (Our italics.)
>
> *White* v. *United States*, 276 U. S. 175.

See also

Manhattan Life Insurance Company v. *Smith*, 44 Ohio St. 155-6 N. E. 417.

Bank of Washington v. *Hume*, 128 U. S. 195.

Aetna Life Insurance Company v. *Phillips*, 60 F. (2d) 901.

Helvering v. *Parker*, 84 F. (2d) 838.

Point IX.

Regulations adopted by the Veterans' Administration regarding War Risk Insurance contracts have the force of law and become a part of each contract, but an insurance contract entered into on behalf of the United States, by an authorized representative, beyond the authority of such regulations, may be ratified by the Veterans' Administration and become binding on all parties thereto, provided, the authority granted the Veterans' Administration by Congress would have permitted the adoption of regulations authorizing such a contract.

Swayne and Hoyt v. *United States*, March 1, 1937, 57 S. Ct. 478.

Point X.

The insurance contract herein involved, including the consent of parents, was ratified by the Veterans' Administration in its execution and delivery of the certificate and its deduction of premiums from insured's pay, in accordance therewith, all of which is and was permissible under the authority granted by Congress. The provision that the insurance could not be cancelled without the parents' consent is lawful because it is merely an agreement to protect the infant and his parents in accordance with the common law requiring the written waiver or consent to his enlistment.

Danbar v. *Danbar*, 190 U. S. 340.

Point XI.

Persons dealing with the United States are charged with notice of limitation of its agent's authority, but if through mistake of the government's representative, the contract exceeds his authority, the contracting party should not be made to suffer unless the contract is prohibited.

Sutton Trustee in Bankruptcy v. *United States*, 256 U. S. 575.

Wilber National Bank of Oneata, N. Y. v. *United States*, 294 U. S. 120.

White v. *United States*, 276 U. S. 175.

Point XII.

When the United States enters into a contract it so far takes the position of a private person as to agree by implication that justice may be done regarding all rights created by said contract, and "the absence of legal liability in a case where but for sovereignty it would be liable does not destroy the justice of the claim against it. * * * The rea-

sons are strong for not obstructing the application of natural justice against the Government by technical formulas when justice can be done without endangering any public interest."

Luckenback S. S. Co. v. *Norwegian Barque Tlukla,* 266 U. S. 328, 340, 341.

American Propeller and Manufacturing Company v. *United States,* ..... U. S. ....., 57 S. Ct. 521. (March, 1937.)

Point XIII.

"No minor under the age of fourteen years shall be enlisted in the naval service; and minors between the age of fourteen and eighteen years shall not be enlisted for the naval service without the consent of their parents or guardian." Section 161, title 34, U. S. C. A.

Point XIV.

"Contracts of infant which appear on their face to be to his prejudice are void, and other contracts are voidable, except for necessaries furnished to him at fair prices."

Mutual Life Insurance Company of New York v. *Schiavon* (C. C. A. 8) 71 F. (2d) 980.

The contract cancelling this insurance was void because it appears on its face to be to his prejudice. The insurance provides benefits to the insured for total permanent disability and it was to his prejudice to discontinue the same.

"In *Sims* v. *Everhardt,* 102 U. S. 300, 313, 26 L. Ed. 87, 89, which was a suit in equity, this court said:

> 'Without spending time to look at the reason, the authorities are all one way. An estoppel in pais is not applicable to infants, and a fraudulent representation of capacity cannot be an equivalent for actual capacity. *Brown* v. *McCune,* 5 Sandf. 224; *Keene* v. *Coleman,* 39

Pa. 299, 80 Am. Dec. 524. A conveyance by an infant is an assertion of his right to convey. A contemporaneous declaration of his right or of his age adds nothing to what is implied in his deed. An assertion of an estoppel against him is but a claim that he has assented or contracted. But he can no more do that effectively than he can make the contract alleged to be confirmed.' ''

Myers v. *Hurley Motor Co., Inc.*, 275 U. S. 21-27.

Point XV.

Officers and agents of the Government are presumed to act within the authority of their official duties and the burden is on petitioner to show the acts complained of were beyond the authority of said officer or was not authorized by law. There was no law or evidence offered to show his contract was beyond the authority authorizing the same.

Point XVI.

The status of an infant becomes changed when he enlists in the United States Army or Navy and he cannot rescind the same, but his parents or guardian may rescind such contract of enlistment, unless they have consented and become a party thereto.

Frank Morrisey v. *Major David Perry*, 137 U. S. 225.

United States v. *Grimley*, 137 U. S. 147.

Point XVII.

A Sovereign may require the services of its citizens regardless of age on any terms it may designate, but when such services are required or accepted it is bound by the terms of agreement providing for such services.

SUMMARY OF ARGUMENT.

The trial court lost jurisdiction on the first Monday in November, 1935 at the expiration of the October, 1935 term of said Court and because thereof the United States Circuit Court of Appeals for the Seventh Circuit and the United States Supreme Court never acquired jurisdiction.

This is a suit by the mother, beneficiary of a War Risk Insurance contract, issued to her by defendant on the life of her seventeen year old son, in accordance with the law and regulations governing the same, and a special clause or agreement with his parents granting the beneficiary a vested interest in said Insurance. All necessary provisions to keep said insurance in force during said enlistment required of insured and his parents were complied with by them but by a secret contract thereafter consummated between said infant, while still an infant, and said insurer, without the knowledge or consent of the parents, the beneficiary, an attempt was made to cancel and defeat said insurance. Upon the execution of the insurance contract, in accordance with the consent of parents, the beneficiary obtained a vested interest therein that could not be divested or destroyed by the insured and insurer without the knowledge and consent of the beneficiary.

The insured, an infant, made a valid insurance contract with insurer and his parents, wherein, for a valuable consideration, his mother as beneficiary acquired a vested interest. The contract was exceptionally favorable to the infant because of the total permanent disability benefits contained therein and an attempted cancellation thereof is to his prejudice and void. Said contract cancelling said insurance is controlled by the common law rule controlling infants' contracts and if not void, is subject to rescission by the

infant, or in case of death of the infant during infancy, by his personal representatives. The contract attempting to cancel the insurance was duly and timely rescinded by the personal representatives of the infant who died in infancy, therefore is void, and the contract of insurance is and always has been valid.

This contract in its entirety is permissible under the law and regulations, was approved and ratified by the government and honesty and fair dealing demand its fulfillment by the government as well as by the insured and his parents.

ARGUMENT.

Respondent submits this court is without jurisdiction, as there was no proper Bill of Exceptions filed during the trial term of said court and said term or the time for settling, signing, and filing the Bill of Exceptions was not extended therefor, as required by law.

Respondent submits this record discloses the trial court lost jurisdiction of this case at the close of the October, 1935 term of said court, the first Monday in November, 1935, and all proceedings thereafter by the trial or appellate courts are void. Furthermore, the extension of time to March 3, 1936 did not include March 3rd but said time expired at midnight at the close of March 2, 1936 and all attempted action taken thereafter was without jurisdiction of the trial court. (See R. 28-29.)

The sovereign has a right to require the services of its citizens of all ages at any time and upon any terms it elects, but, when the sovereign requires or accepts the services of its citizens, it is bound by the terms of agreement between it and such citizens for such services.

Under Section 161, Title 34, U. S. C. A., *supra,* minors over the age of fourteen are eligible to service in the United States Navy, but none under the age of eighteen can be accepted, except by consent or release of his parents or guardians. This grants the naval officers authority to negotiate with the parents or guardian and contract for the services and enlistment of such minor. This authority has no restrictions and is valid if reasonable and not in conflict with any law or regulations governing the same.

The findings of fact are conclusive that by the terms of said required release or consent of parents, for a valuable consideration, and as a part of the contract of insurance,

the insurer and insured agreed with plaintiff to continue said insurance during minority of insured, thereby granting her a vested interest in said insurance. (Finding VII, R. 8.)

We have been unable to find any case sustaining petitioner's contention in this case. The case of *Van Der Lippi Lipski* v. *United States*, 4 Fed. (2d) 168, holds a similar contract between the beneficiary and an infant insured invalid where the insurer had no part in the contract and the case of *White* v. *United States, supra,* holds that the rights of the beneficiary are controlled entirely by the contract, "the only relations of contract were between the government and him" (insured) "White's mother's" (the beneficiary's) "interest at his death was vested only so far as he and the government had made it so, and was subject to any conditions upon which they might agree. They did agree to terms that cut her rights down to one-half. She is a volunteer and she can claim no more." In the instant case the beneficiary is not a volunteer but is a party to a valid contract, which for a valuable consideration, gives her a vested interest that could not be divested by the joint acts or connivance of the insured and insurer without her knowledge and consent. This may have been beyond the authority granted by the regulations of the Veterans' Administration in force, but was permissible under the authority granted the Veterans' Administration by Congress and when ratified by the Veterans' Administration in issuing the insurance certificate and deducting premiums from his pay, in compliance therewith, became binding on all parties. This we submit is the law, even if the insured had not been a minor. The consent or release of parents was required, became a part of the insurance contract and, for a valuable consideration, gave the beneficiary a vested interest in the insurance just as definitely as if said insurance contract had contained a clause that the beneficiary had a vested interest that could not be divested without the beneficiary's consent.

The regulation providing insured could change the beneficiary without her consent is a part of all War Risk Insurance contracts and is valid, but a change of beneficiary is not involved in this case and this regulation does not apply. Furthermore, if a special provision in an insurance contract is in conflict with a general provision, the two must be construed together and the special provision is controlling.

If the insurer had not been a party to the special provision of this contract, it would then have come under the rule applied in the Van Der Lippi-Lipski and the White cases, *supra,* but for a valid consideration the beneficiary obtained a vested interest, which takes it out of this rule and her interest became vested and cannot be divested by the insured and insurer without her knowledge and consent.

There is another feature in this case that is conclusive in holding this insurance valid. The insured was an infant and there is nothing in the facts or any law that takes this contract out of the common law rule governing infant's contracts. There is no doubt that the sovereign could require insured's services without the consent of parents had it so desired, but, it did not do so. On the contrary, by requiring the consent of parents or guardian, it specifically recognized the common law rule and made its contracts accordingly. Therefore, the contracts involved herein must be governed by the common law rule as to infants' contracts. This rule is recognized by petitioner in its pleadings in the Van Der Lippi-Lipski case, *supra,* wherein it "interposed a motion to dismiss the amended bill of complaint on the following grounds: * * * and that it appears from the amended bill that the substitution of his wife, Dorthea Reeves Phillips, as beneficiary under said contract, had been affirmed and ratified by Lieut. Phillips after he attained his majority." (P. 169)

There are but two exceptions to an infant's right to rescind his contract. One is a contract for necessaries and the other is his contract of enlistment in the United States Army or Navy. An infant who enlists in the army or navy cannot rescind his contract of enlistment because he is contracting with a sovereign and his status becomes changed. However, this is not the law with his parents. An infant cannot rescind his contract of enlistment, but his parents or guardian can, and their rights have always been recognized. (*Frank Morrisey* v. *Major David Perry.*) This right is recognized in this case by the law providing that release or consent of parents or guardian must be obtained before an infant can be enlisted, if the infant is under eighteen years of age. Had this boy been over 18 years of age, this issue would not be involved in this case.

It necessarily follows that the sovereign may make a valid contract with the parents or guardian and an infant for his enlistment. That is what was done in the instant case and this contract became and is a part of the insurance contract herein involved. The sovereign agreed with the infant and his parents to carry the War Risk Insurance on insured during infancy and it is bound by that contract which became and is a part of or must be construed with this insurance contract.

The contract of enlistment and insurance, including the agreements to carry the insurance during infancy and to deduct the premiums from his pay, was valid and binding on all because the parents joined the infant and insurer therein, but not so with insured's contract with insurer to cancel said insurance. That was a secret contract between the infant insured and insurer to deprive the parent, beneficiary, of a valid, vested interest in the contract of insurance. This they could not do under the terms of his enlistment.

This contract attempting to cancel the insurance is void because it appears on its face to be to the prejudice of the insured infant. The insurance could not be had from any one but the government and "It was not one entered into by the United States for gain. All soldiers were given a right to it and the relation of the government to them if not paternal was at least avuncular. It was a relation of benevolence established by the government at considerable cost to itself for the soldier's good." Mr. Justice Holmes, in *White* v. *United States, supra.* This contract provides for disability benefits to insured and a court will take judicial knowledge that the contract cancelling his insurance appears on its face to be to his prejudice and is void.

Assuming, however, that it is not necessarily void, it is voidable and subject to rescission by the infant, or in case of his death while an infant, by his personal representatives. The trial court's finding is conclusive that this cancellation contract was promptly rescinded by insured's personal representatives, and the valid contract of insurance herein involved remained in force. (R. 9)

By contract of insured, with the knowledge and written approval of the parents, the insurer was authorized and agreed to deduct from insured's pay, which under the common law belonged to said parents, the monthly payments of premiums as they became due, and, the findings of fact is conclusive there was at all times sufficient pay due to have paid said premiums as they became due. (R. 8.) The regulations controlling provide that under these facts the insurance remains in force, even if the government failed to make the monthly premium deductions. It is stipulated he remained in the service and the presumption is he continued to earn his pay until death. The defendant also recognized this by paying his personal representatives the pay he earned. There is no issue as to whether there was

at all times sufficient pay due to have more than paid the premiums as they became due.

Section 202 of the War Risk Insurance Act provides:

> That the enlisted man may allot any proporttion or proportions or any fixed amount or amounts of his monthly pay or of the proportion thereof remaining after the compulsory allotment, for such purposes and for the benefit of such person or persons as he may direct, subject, however, to such conditions and limitations as may be prescribed under regulations to be made by the Secretary of War and the Secretary of the Navy, respectively.

The insured's pay belonged to his parents and by the terms of the consent of parents, under said Section 202 of the War Risk Insurance Act, that portion specifically set apart for the payment of the monthly premiums, became as a compulsory allotment and was not subject to further directions of the enlisted man.

Petitioner calls attention to the Instructions for Recruiting Officers of the United States Navy (R. 24) that, "He will use great care to see that no one under his command makes any promise or statement, assignment, instruction, or benefits in the Navy which cannot be carried out after enlistment, etc." It is presumed he did this and the burden is on petitioner to prove he did not. Petitioner has shown no regulations, law or evidence that this contract in its entirety, or any part thereof, was not permissible and was not sanctioned and ratified by every department of the government therein. It is not only permissible but a commendable contract and petitioner has been unable to call attention to any law or regulation in contravention thereof.

Counsel for petitioner apparently admit the validity of the contract with the parents to carry the insurance during infancy, but argue the government could agree to such a contract to induce the parents to give said consent, and as

soon as said infant arrived at the age of eighteen the government could rescind its valid contract, entered into to induce the parents to release their claim to his earnings during infancy. This would be an outright fraud and will not be permitted. They could not have repudiated any part of this contract subsequent to its execution without the consent of the government. Our government should and must live up to its contract as well as its citizens. Certainly Congress never intended it should not when it required the Navy to secure the release of these parents and authorized the issue of this insurance.

Respondent respectfully submits that this record clearly discloses the contract of insurance herein involved was duly and regularly issued, that the insured and beneficiary complied with all the terms thereof required of them, and said insurance was valid, was in full force and effect at the time of the death of insured, June 30, 1921, and the judgments of the trial court and the Circuit Court of Appeals should be affirmed.

Respectfully submitted,

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